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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,607	05/25/2005	Emmanuel Martin	HP/15-22797/MA 2231/PCT	2273
324	7590	03/16/2009	EXAMINER	
JoAnn Villamizar Ciba Corporation/Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			PEZZUTO, HELEN LEE	
			ART UNIT	PAPER NUMBER
			1796	
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			03/16/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/536,607	Applicant(s) MARTIN ET AL.	
	Examiner Helen L. Pezzuto	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6,10,13-18,21 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4, 6, 10, 13-18, 21, 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/2/09 has been entered.

Response to Amendment

Applicant's amendment to claims 1, 25, and the cancellation of claims 7-8, 19-20, 23-24 filed in the response on 3/2/09 is acknowledged. Currently, claims 1-2, 4, 6, 10, 13-18, 21, and 25 are pending in this application.

In light of applicant's amendment to claim 1, DE 101 16 491 A1 is withdrawn as an applied reference.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4, 6, 10, 13-18, 21, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biggin et al. (US-600) or Shulman et al. (US-756) for the reasons of record.

US 5,114,600 to Biggin et al. discloses a fabric conditioning formulation comprising a crosslinked cationic polymer, a cationic softener, and conventional additives (see abstract). Specifically, prior art teaches a cationic polymer derived from quaternized dialkylaminoalkyl (meth)acrylate, acrylamide, and 5-45 ppm of a crosslinking agent such as methylene bisacrylamide, which abuts the instant less than 5 ppm (col. 3, lines 1-20). Furthermore, chain transfer agent was suggested to control the degree of crosslinking and branching in the resultant polymer (col. 4, lines 1-29). Prior art suggests adding cationic polymer particles in less than 10 micrometers in size, which abuts the instant average particle size of more than 10 μ m expressed in amended claim 1. Since the claimed amount of crosslinking agent and average particle size abut those of

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US-600, the examiner is of the position that such abutting ranges, though not overlapping, are sufficiently close that they establish prima facie case of obviousness because one having ordinary skill in the art would expect them to have identical or near identical properties.

US 6,451,756 B2 to Shulman et al. discloses a method of promoting soil release from fabric comprising contacting polycarboxylic polymers of Formula I with fabric (see abstract). One of patentees' embodiments entails combining the polymer with a rinse added fabric softener through the rinse cycle of the washing operation (col. 5, lines 54-56; col. 11, lines 45-64), within the scope of the instant fabric softener composition. Prior art polymer defined by Formula I contains monomer C which maybe one or more cationic or non-ionic monomer, including DMAEMA, DADMAC, and acrylamide defined within the scope of the instant formulas (I) and (II) (col. 4, line 39 to col. 5, line 7). Prior art discloses the optional inclusion of crosslinking agent, but is not particularly limited to any amount. US-756 is silent regarding the particle size of the polymer.

US-756 discussed above is silent regarding the particles size expressed in the present claims. Being silent prior art is generic to any particles size,

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inclusive of applicant's, absent showing of unexpected results commensurate in scope with the recited particles size. Biggin et al of US-600 specifically teaches control of particles size in emulsion or reverse phase polymerization by controlling the shear applied to the monomers and by using different emulsifying agent (col. 4, lines 43-62). Accordingly, it would have been obvious to one having ordinary skill in the art to determine the optimum particle size suitable for its utility in fabric softener formulations, motivated by the reasonable expectation of success as taught. Such discovery of an optimum value of a result effective variable would involve only routine skill in the art. Thus, rendering obvious the present claims.

Response to Arguments

Applicant's amendment and remarks filed on 3/2/09 have been fully considered. Firstly, regarding the particle size of the copolymer and the amount of crosslinking agent it contains, the examiner remains of the position that the less than 10 μm and at least 5 ppm in Biggin et al. is sufficiently close to the recited more than 10 μm and less than 5 ppm that one skilled in the art would have expected the copolymer products to have the same properties. Thus, a

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prima facie case of obviousness exists in the absence of comparative showing of unexpected and/or unusual results demonstrated for the claimed particle size and amount of crosslinking agent. For example, applicant has not shown criticality in a claimed embodiment of a copolymer having 10.1 μm particle size and containing 4.99 ppm of crosslinking agent as compared to a prior art copolymer having a 9.99 μm particle size and containing 5.01 ppm of a crosslinking agent. Secondly, Biggin et al disclose the particle size of the copolymer can be greater 10 μm prior to its addition to an aqueous solution or dispersion (col. 3, lines 28-40). The present claims recites polymer in the form of particles has an average particle size of more than 10 μm , not the particle size of the copolymer at the time of its addition to an aqueous solution or its existence in a dispersion. Regarding Shulman et al., applicant urges that one skilled in the art would have to choose two different monomers from the list of possible monomers C in the reference and such expressive guidance is absent from Shulman et al. The examiner is of the position that since prior art teaches selecting at least one of monomer C inclusive of the instant monomers (I) and (II), it would have been obvious to one skilled in the art to select them,

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motivated by the reasonable expectation of success in producing a fabric conditioning formulation as taught. Accordingly, the examiner's position is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen L. Pezzuto whose telephone number is (571) 272-1108. The examiner can normally be reached on 8 AM to 4 PM, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Helen L. Pezzuto/
Primary Examiner
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hlp